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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1947

No. 257

STATE OF FLORIDA EX REL. WILLIAM H. McKEIGHAN,

Appellant,

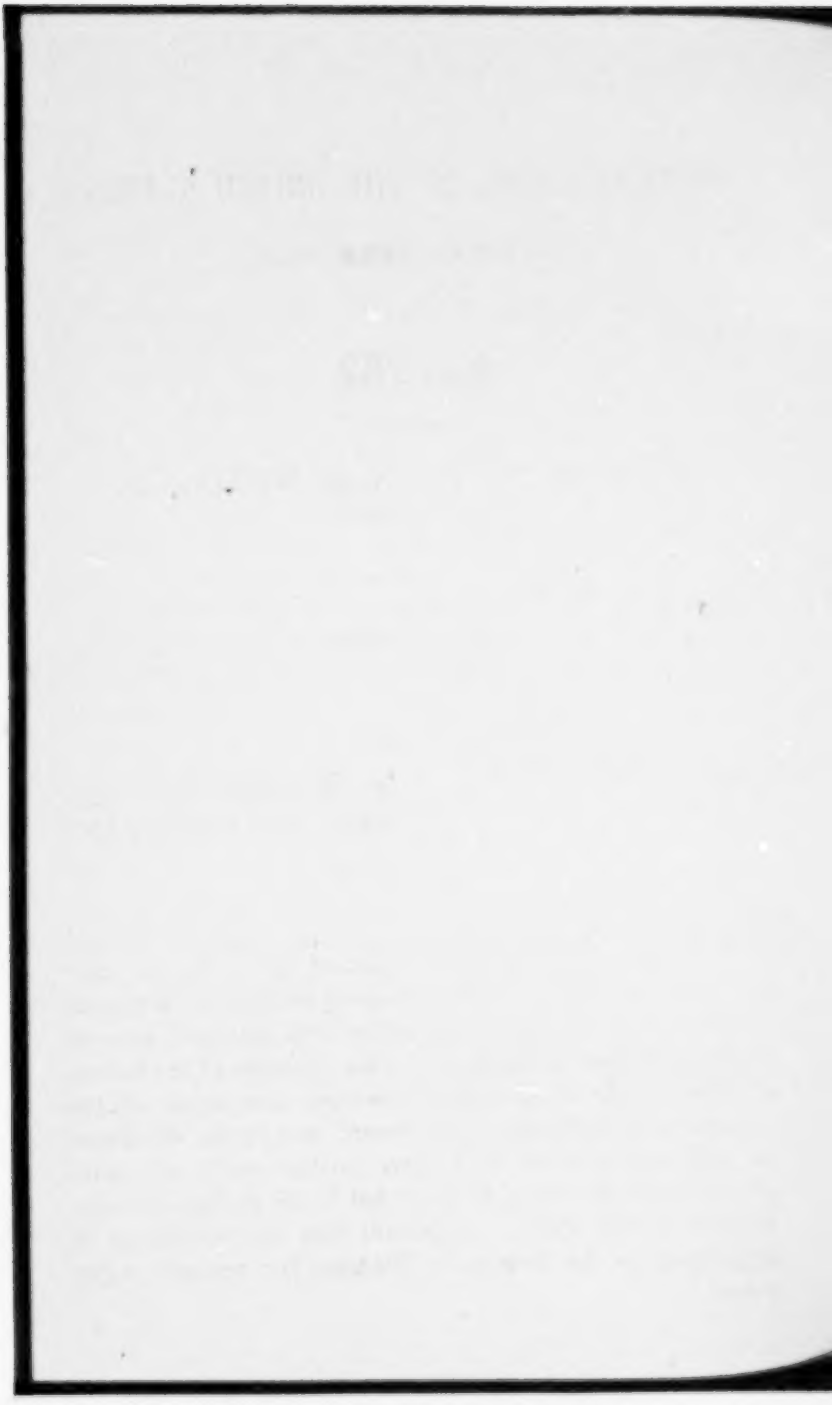
vs.

JIMMY SULLIVAN, AS SHERIFF OF DADE COUNTY, FLORIDA

APPEAL FROM THE SUPREME COURT OF THE STATE OF FLORIDA

APPELLANT'S BRIEF OPPOSING MOTION TO DISMISS

NEVILLE MILLER,
Counsel for Appellant.



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Appellee

STATEMENT IN OPPOSITION TO APPELLEE'S MOTION TO DISMISS THE APPEAL AND STATEMENT AGAINST JURISDICTION.

In answer to Appellant's statement as to the jurisdiction of this Court to review this cause on appeal. Appellee has filed a statement in opposition and has incorporated therein a Motion to Dismiss. In the interests of the saving of time, of the avoidance of needless duplication of the machinery and efforts of this Court, and of the avoidance on technical grounds of a mere postponement of issues which must ultimately be conceded to be within the competence of this Court. Appellant files this statement in opposition to the Motion to Dismiss, for reasons stated below.

The basic defect in Appellee's Motion to Dismiss, as revealed by the supporting statement, is that it ignores the fact that this cause is founded on *habeas corpus,* and that issues going to illegal restraint of liberty are always timely in *habeas corpus* proceedings. *Bowen* v. *Johnston,* 306 U. S. 19. They cannot be permanently dissipated because of technical defects, such as are alleged in Appellee's statement, but can be raised immediately upon dismissal of an appeal, in another petition for *habeas corpus. Waley* v. *Johnston,* 316 U. S. 101. It is not possible in *habeas corpus* proceedings to forfeit, automatically, legitimate grounds merely upon technical objections going to the timeliness or procedure of raising these grounds. *Habeas corpus* is an extraordinary remedy, invoked in exceptional circumstances; and "Among these exceptional circumstances are those indicating a conflict between State and Federal authorities on a question of law involving concerns of large importance affecting their respective jurisdictions." *Bowen* v. *Johnston,* 306 U. S. 19, 27.

Thus it is apparent that if this appeal should be dismissed upon the points stated in the statement of Appellee, nothing in this cause would be solved or settled; for Appellant might immediately seek another writ of *habeas corpus* on the very grounds asserted here, and *in the new habeas corpus proceeding the questions would be timely raised. Hawk* v. *Olson,* 326 U. S. 271; *Ex Parte Hawk,* 321 U. S. 114. Another long trail of appeals would then be instituted, coming ultimately to this Court—and on that second appeal, no such technical objections could be raised. But this is not all; as Appellant's Jurisdictional Statement in its Conclusion pointed out, this cause is within the present competency of the Court in its original jurisdiction to issue a writ of *habeas corpus,* 28 U. S. C. 451, 452, and on this ground any argument making against jurisdiction ought to

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be discounted. The only question for this Court ought to be whether in fact a substantial Federal question requiring decision by this Court, is involved in the cause at bar. Cf. *Johnson* v. *Zerbst*, 304 U. S. 458.

It should be noted in conclusion that the Motion to Dismiss does not question the importance and substantiality of a number of issues raised in Appellant's Assignment of Errors, particularly the challenge to the Uniform Criminal Extradition Act as adopted by Florida, and the challenge to the sufficiency of the underlying documents (one of which is a warrant based upon the notorious Michigan "one-man Grand Jury" device): and thus it is obvious that even were Appellee's objections sustained as to jurisdiction of this Court to review on appeal, this cause involves substantial and important Federal questions; and under the provisions of 28 U. S. C. 237(c), this appeal should not be dismissed but should be considered as a petition for certiorari.

For these reasons Appellant opposes the Motion to Dismiss and asks that it be overruled.

Respectfully submitted,

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August 1, 1947.